

JAMES M. CHUDNOW
JOHN L. MESSINGER

IBLA 82-741

Decided November 15, 1982

Appeal from decision of Montana State Office, Bureau of Land Management, rejecting oil and gas lease offer M 51900.

Affirmed.

1. Oil and Gas Leases: Applications: Description -- Oil and Gas Leases: Description of Land -- Oil and Gas Leases: Rentals

An oil and gas lease offer for surveyed land or land within a protracted survey must describe the land by legal subdivision, section, township, and range, even though irregular parcels of land within that subdivision may not be available for leasing. The addition of phrases such as "all available" or "less patents" to such a description does not make the description improper. However, where the excepted land is not specifically identified in the offer, the offeror is required to submit the first year's rental for all of the acreage in each subdivision described in the offer without subtracting amounts allocable to the patented acreage, and rejection of the offer is required where the offeror fails to submit sufficient rental within the limits of curable deficiency.

APPEARANCES: James M. Chudnow and John L. Messinger, pro sese.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

James M. Chudnow and John L. Messinger appeal from a decision of the Montana State Office, Bureau of Land Management (BLM), dated April 12, 1982, rejecting oil and gas lease offer M 51900 because the first year's rental was more than 10 percent deficient, citing 43 CFR 3103.3-1.

Oil and gas lease offer M 51900 is for surveyed lands and generally describes those lands by legal subdivision, section, township, and range, consistent with the requirements of 43 CFR 3101.1-4(a). However, appellants added the phrase "less patents" to the descriptions of two parcels in this offer. The lands described by appellants contain 923.15 acres but appellants submitted rental for only 808 acres. Appellants did not submit sufficient rental to cover all of the acreage within the regularly described subdivisions, having subtracted the amount allocable to the patented acreage. BLM rejected the offer holding that the rental was more than 10 percent deficient.

Appellants contend that other BLM offices will issue leases described in the same manner as that in question. Appellants point to 43 CFR 3101.1-4(d)(2) which indicates that an offer may include less than an entire protracted section where only a portion of such section is available for lease. Appellants assert that the phrase "less patents" seems to comply with the regulations by making clear that there are specific reductions in the lands requested. Appellants further contend that it seems wholly inappropriate for BLM to base its acreage total upon lands which are unavailable for leasing and which appellants excluded from the filings in question.

[1] An oil and gas lease offer for surveyed land or land within a protracted survey must describe the land by legal subdivision, section, township, and range, even though irregular parcels of land within the subdivision may not be available for leasing. See 43 CFR 3101.1-4(a), (d); William B. Collister, 71 I.D. 124 (1964). The addition of phrases such as "all available" or "less patents" to such a description does not make the description improper where the offeror submits full rental for the section or subdivision. James M. Chudnow, 67 IBLA 76 (1982); Milan S. Papulak, 30 IBLA 77 (1977); William B. Collister, *supra*; *cf.* Milan S. Papulak, 63 IBLA 16 (1982) (holding a description to be improper if the phrase "excl. fee" is added to a regular section and insufficient rental is paid for the entire section). Because such qualifying phrases fail to describe specifically the land to be excluded from the offer, offers containing such phrases must be construed as applications for the entire section or subdivision to which the qualifying phrase has been appended. Accordingly, the offeror is required to submit the first year's rental for all of the acreage in each subdivision described in the offer without subtracting amounts allocable to the patented acreage which has not been specifically identified, and rejection of the offer is required where the offeror fails to submit sufficient rental within the limits of curable deficiency. James M. Chudnow, *supra*; *cf.* Milan S. Papulak, 30 IBLA 77, 81 (1977) (rental held within the limits of curable deficiency); William B. Collister, *supra* (full rental submitted). If an offeror does not wish to submit rental for an entire section or subdivision which contains patented lands, he may specifically identify the land to be excluded by its legal description or patent number. See, e.g., Leon Jeffcoat, 66 IBLA 80 (1982). Appellants, however, did not do this.

The rental submitted must correspond to the acreage described in the offer. In Mountain Fuel Supply Co., 13 IBLA 85 (1973), we held that where a lease offer creates an ambiguity in the land description so that it could be

construed as including land unavailable for leasing for which the applicant did not intend to apply, that acreage cannot be disregarded in calculating the total amount of the land. The Board pointed to 43 CFR 3103.3-1 which requires that "[e]ach offer when first filed, shall be accompanied by full payment of the first years rental based on the total acreage * * *." (Emphasis added.) The Board stated that in order to process the large volume of applications, certain procedures must be followed which for their successful operation require complete accuracy on the part of the applicants. The Board explained that the state offices simply do not have the time, the money, or the authority to correct errors of applicants. Where an offeror fails to tender sufficient rental to cover all of the lands in the offer and the rental tendered is deficient by more than 10 percent, the offer is properly rejected. James M. Chudnow, *supra*.

Also, we note that one of the parcels requested is described by appellants as follows: sec. 27: SE 1/4 E 1/2 SE 1/4 NW 1/4. BLM entered a handwritten notation on the lease offer next to this parcel which reads "unable to plat." This land description is not a proper one. Even if BLM could resolve the disparity in the description, it is not its function to alter or modify lease offers for offerors. C. C. Hughes, 33 IBLA 237 (1977).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

